Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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RE: ***Charge Injection Technologies, Inc. v. E. I. DuPont de Nemours and Company***
C.A. No. 07C-12-134-JRJ

Dear Counsel:

Before the Court is the motion for reargument of Plaintiff, Charge Injection Technologies, Inc. ("CIT"). CIT asks the Court to reconsider its September 25, 2009 decision, granting summary judgment to Defendant E.I DuPont de Nemours and Company ("DuPont"). For the following reasons, CIT's motion for reargument is **DENIED**.

PROCEDURAL HISTORY

In its motion for summary judgment, DuPont argued that Article 13 of the Flash Spinning JDA (the "JDA") survives termination of the JDA. This Court agreed and granted DuPont's motion for summary judgment. The parties agree that: (1) the JDA is unambiguous; (2) the JDA is "the result of an arms length negotiation between sophisticated parties;"[1] (3) because the terms of the JDA are "clear on their face," "they should be given the meaning that would be ascribed to them by a reasonable third-party;"[2] (4) "the JDA must be read as a whole and to give life and meaning to every provision in the contract;"[3] and (5) the contract provisions cannot be reduced to mere surplusage.[4] Based on these agreements, the Court noted that "[t]he Court can interpret the Article 15.(4) language 'to the extent provided in such Articles' in only one way, or else run the risk of rendering the provision a 'mere surplusage.'"[5] In keeping with this finding, the Court ultimately held that Article 13 survives termination of the JDA.[6] CIT moved for reargument.

CIT was granted the opportunity to file additional briefing on the second principle of contract interpretation referenced in its motion for reargument, and

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[1] Hr'g Tr. 2, July 14, 2009, Docket Item ("D.I.") 59.
[2] D.I. 59 at 3.
[3] *Id.*
[4] *Id.*
[5] Mem. Op. Granting DuPont's Mot. for Summ. J., D.I. 110, at 4 (quoting *Elliot Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998)).
[6] *Id.* at 4-5.

DuPont was given the opportunity to respond. CIT argues that the Court did not find that the contractual language at issue is "unmistakably clear" and that DuPont's interpretation is the only "reasonable" or "plausible" interpretation.[7] Despite it's previous characterization of the language of the JDA as unambiguous, CIT now argues that the fact that the parties advanced "diametrically conflicting interpretations means that the JDA is not 'unmistakable clear,'" and asserts that summary judgment was not appropriate under these circumstances.[8] Last, CIT argues that the Court should have denied or deferred ruling on DuPont's summary judgment motion until after considering extrinsic evidence regarding the parties' intent.[9]

In response, DuPont argues that CIT is judicially estopped from arguing that the JDA is ambiguous, in light of its earlier position that the JDA is unambiguous.[10] Further, DuPont argues that the JDA is unmistakably clear and its interpretation is the only "reasonable" interpretation[11]. Last, DuPont argues that

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[7] Pl. CIT's Open. Br. in Supp. of the Second Principle of Contract Interpretation Referenced in its Mot. for Rearg. Pursuant to R. 59(3), D.I. 128, at 4-6.

[8] *Id.* at 4.

[9] *Id.* at 6-7.

[10] Def. DuPont's Answering Br. Regarding the Second Principle of Contract Interpretation Cited in CIT's Mot. for Rearg., D.I. 140, at 5-6.

[11] *Id.* at 6-7.

the Court did find that the JDA was unmistakably clear and could be interpreted in only one way and, therefore, reargument is inappropriate.[12]

DISCUSSION

A party may petition for reargument of a decision or opinion of the Court under Superior Court Rule of Civil Procedure 59(e). Generally, reargument will be denied unless the moving party can demonstrate that "the Court 'overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.'"[13] A motion for reargument should not be used for "raising new arguments or stringing out the length of time for making an argument."[14] A moving party has the burden of demonstrating "newly discovered evidence, a change in the law or manifest injustice."[15]

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[12] *Id.* at 14-16.

[13] *Monsanto v. Aetna Cas. and Ins. Co.*, 1994 WL 46726, at *2 (Del. Super. Jan. 14, 1994) (quoting *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, 1990 WL 237093, at *1 (Del. Ch. Dec. 27, 1990); *Miles, Inc. v. Cookson America, Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995).

[14] *Cummings v. Jimmy's Grille, Inc.*, 2000 WL 1211167, at *2 (Del. Super. Aug. 9, 2000) (citing *In re Murphy v. State Farm Ins. Co.*, 1997 WL 528252, at *1 (Del. Super. July 24, 1997)).

[15] *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000)(citing *E.I. duPont de Nemours Co. v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. Super. 1995)).

The burden of showing that contractual language is "unmistakably clear" rests with the moving party, and DuPont satisfied that burden in its motion for summary judgment.[16] CIT has not established that the Court misapprehended the law or facts that would affect the outcome of the decision, nor has CIT presented any newly discovered evidence. CIT does nothing more than make assertions that its interpretation of the JDA is "reasonable" and "plausible."[17] CIT's mere assertions are insufficient to convince the Court that reargument is warranted. CIT offers no new evidence or argument in support of these assertions, and the Court fails to see how CIT's interpretation is "reasonable" or "plausible" in light of the principle that contract language may not be interpreted in such a way that renders the majority of Article 15.(4) "mere surplusage." Last, the Court need not consider extrinsic evidence of the parties' intent, where, as here, the contract language is not reasonably susceptible to more than one interpretation.[18]

The Court agrees that if CIT's interpretation was also "reasonable" or "plausible," summary judgment would not be appropriate. However, DuPont has met its burden of proving that CIT's interpretation is neither "reasonable" nor

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[16] *See JANA Master Fund, Ltd. v. CNET Networks, Inc.*, 954 A.2d 335, 339 (Del. Ch. 2008).

[17] *See* D.I. 128, at 4.

[18] *See Eagle Indus., Inc. v. DeVilbiss Heathcase, Inc.*, 702 A.2d 1228, 1232 (Del. 1997) ("If a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity.").

"plausible," and CIT has failed, in its response to DuPont's motion for summary judgment and its motion for reargument, to convince the Court otherwise. While the Court did not use the "magic words" CIT is looking for, the Court did find that DuPont established that its interpretation of the contested language is the only "reasonable" or "plausible" interpretation, and the Court's original ruling should stand.

CONCLUSION

For the aforementioned reasons, summary judgment was appropriate and CIT's motion for reargument is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

c.c. Prothonotary – Original
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